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Enclosure: Metro Broadcasting, Inc. v. FCC, 497 U.S. 547

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METRO BROADCASTING, INC. v. FEDERAL COMMUNICATIONS COMMISSION ET AL.

METRO BROADCASTING, INC. v. FCC

No. 89-453

SUPREME COURT OF THE UNITED STATES

497 U.S. 547, 110 S. Ct. 2997; 1990 U.S. LEXIS 3459; 111 L. Ed. 2d 445; 58 U.S.L.W. 5053; 53 Fair Empl. Prac. Cas. (BNA) 161; 53 Empl. Prac. Dec. (CCH) P40,037; 67 Rad. Reg. 2d (P & F) 1353

March 28, 1990, Argued
June 27, 1990 *, Decided

* Together with No. 89-700, Astroline Communications Company Limited Partnership v. Shurberg Broadcasting of Hartford, Inc., et al., also on certiorari to the same court.

PRIOR HISTORY: [**1]

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

DISPOSITION: No. 89-453, 277 U.S. App. D. C. 134, 873 F. 2d 347, affirmed and remanded; No. 89-700, 278 U.S. App. D. C. 24, 876 F. 2d 902, reversed and remanded.

SYLLABUS: These cases consider the constitutionality of two minority preference policies adopted by the Federal Communications Commission (FCC). First, the FCC awards an enhancement for minority ownership and participation in management, which is weighed together with all other relevant factors, in comparing mutually exclusive applications for licenses for new radio or television broadcast stations. Second, the FCC's socalled "distress sale" policy allows a radio or television broadcaster whose qualifications to hold a license have come into question to transfer that license before the FCC resolves the matter in a noncomparative hearing, but only if the transferee is a minority enterprise that meets certain requirements. The FCC adopted these policies in an attempt to satisfy its obligation under the Communications Act of 1934 to promote diversification of programming, taking [**2] the position that its past efforts to encourage minority participation in the broadcast industry had not resulted in sufficient broadcast diversity, and that this situation was detrimental not only to the minority audience but to all of the viewing and listening public. Metro Broadcasting, Inc., petitioner in No. 89-453, sought review in the Court of Appeals of an FCC order awarding a new television license to Rainbow Broadcasting in a comparative proceeding, which action was based on the ruling that the substantial enhancement granted Rainbow because of its minority ownership outweighed factors favoring Metro. The court remanded the appeal for further consideration in light of the FCC's

separate, ongoing Docket 86-484 inquiry into the validity of its minority ownership policies. Prior to completion of that inquiry, however, Congress enacted the FCC appropriations legislation for fiscal year 1988, which prohibited the FCC from spending any appropriated funds to examine or change

its minority policies. Thus, the FCC closed its Docket 86-484 inquiry and reaffirmed its grant of the license to Rainbow, and the Court of Appeals affirmed. Shurberg Broadcasting of Hartford, Inc., one [**3] of the respondents in No. 89-700, sought review in the Court of Appeals of an FCC order approving Faith Center, Inc.'s distress sale of its television license to Astroline Communications Company Limited Partnership, a minority enterprise. Disposition of the appeal was delayed pending resolution of the Docket 86-484 inquiry by the FCC, which, upon closing that inquiry as discussed supra, reaffirmed its order allowing the distress sale to Astroline. The court then invalidated the distress sale policy, ruling that it deprived Shurberg, a nonminority applicant for a license in the relevant market, of its right to equal protection under the Fifth Amendment.

Held: The FCC policies do not violate equal protection, since they bear the imprimatur of longstanding congressional support and direction and are substantially related to the achievement of the important governmental objective of broadcast diversity. Pp. 563-601.

(a) It is of overriding significance in these cases that the minority ownership programs have been specifically approved -- indeed mandated -- by Congress. In light of that fact, this Court owes appropriate deference to Congress' judgment, see Fullilove v. Klutznick, 448 U.S. 448, 472-478, 490, 491 [**4] (opinion of Burger, C.J.); id., at 500-510, 515-516, n. 14 (Powell, J., concurring); id., at 517-520 (MARSHALL, J., concurring in judgment), and need not apply strict scrutiny analysis, see id., at 474 (opinion of Burger, C. J.); id., at 519 (MARSHALL, J., concurring in judgment). Benign race-conscious measures mandated by Congress -- even if those measures are not "remedial" in the sense of being designed to compensate victims of past governmental or societal discrimination -- are constitutionally permissible to the extent that they serve important governmental objectives within the power of Congress and are substantially related to the achievement of those objectives. Richmond v. J. A. Croson Co., 488 U.S. 469, distinguished and reconciled. Pp. 563-566.

(b) The minority ownership policies serve an important governmental objective. Congress and the FCC do not justify the policies strictly as remedies for victims of demonstrable discrimination in the communications media, but rather have selected them primarily to promote [**5] broadcast diversity. This Court has long recognized as axiomatic that broadcasting may be regulated in light of the rights of the viewing and listening audience, and that the widest possible dissemination of information from diverse and antagonistic sources is essential to the public welfare. Associated Press v. United States, 326 U.S. 1, 20. Safeguarding the public's right to receive a diversity of views and information over the airwaves is therefore an integral component of the FCC's mission, serves important First Amendment values, and is, at the very least, an important governmental objective that is a sufficient basis for the

policies in question. Pp. 566-568.

(c) The minority ownership policies are substantially related to the achievement of the Government's interest in broadcast diversity. First, the FCC's conclusion that there is an empirical nexus between minority ownership and greater diversity, which is consistent with its longstanding view that ownership is a prime determinant of the range of programming available, is a product of its expertise and is entitled to deference. Second, by means of the recent appropriations legislation [**6] and by virtue of a long history of

support for minority participation in the broadcasting industry, Congress has also made clear its view that the minority ownership policies advance the goal of diverse programming. Great weight must be given to the joint determination of the FCC and Congress. Pp. 569-579.

(d) The judgment that there is a link between expanded minority ownership and broadcast diversity does not rest on impermissible stereotyping. Neither Congress nor the FCC assumes that in every case minority ownership and management will lead to more minority -oriented programming or to the expression of a discrete " minority viewpoint" on the airwaves. Nor do they pretend that all programming that appeals to minorities can be labeled " minority" or that programming that might be so described does not appeal to nonminorities. Rather, they maintain simply that expanded minority ownership of broadcast outlets will, in the aggregate, result in greater broadcast diversity. This judgment is corroborated by a host of empirical evidence suggesting that an owner's minority status influences the selection of topics for news coverage and the presentation of editorial viewpoint, especially [**7] on matters of particular concern to minorities, and has a special impact on the way in which images of minorities are presented. In addition, studies show that a minority owner is more likely to employ minorities in managerial and other important roles where they can have an impact on station policies. The FCC's policies are thus a product of analysis rather than a stereotyped reaction based on habit. Cf. Fullilove, supra, at 534, n. 4 (STEVENS, J., dissenting). The type of reasoning employed by the FCC and Congress is not novel, but is utilized in many areas of the law, including the selection of jury venires on the basis of a fair cross section, and the reapportionment of electoral districts to preserve minority voting strength. Pp. 579-584.

(e) The minority ownership policies are in other relevant respects substantially related to the goal of promoting broadcast diversity. The FCC adopted and Congress endorsed minority ownership preferences only after long study, painstaking consideration of all available alternatives, and the emergence of evidence demonstrating that race-neutral means had not produced adequate broadcasting diversity. Moreover, [**8] the FCC did not act precipitately in devising the policies, having undertaken thorough evaluations in 1960, 1971, and 1978 before adopting them. Furthermore, the considered nature of the FCC's judgment in selecting these particular policies is illustrated by the fact that it has rejected other, more expansive types of minority preferences -- e. g., setasides of certain frequencies for minority

broadcasters. In addition, the minority ownership policies are aimed directly at the barriers that minorities face in entering the broadcasting industry. Thus, the FCC assigned a preference to minority status in the comparative licensing proceeding in order to compensate for a dearth of minority broadcasting experience. Similarly, the distress sale policy addresses the problem of inadequate access to capital by effectively lowering the sale price of existing stations and the problem of lack of information regarding license availability by providing existing licensees with an incentive to seek out minority buyers. The policies are also appropriately limited in extent and duration and subject to reassessment and reevaluation before renewal, since Congress has manifested its support for [**9] them through a series of appropriations Acts of finite duration and has continued to hold hearings on the subject of minority ownership. Provisions for administrative and judicial review also guarantee that the policies are applied correctly in individual

cases and that there will be frequent opportunities to revisit their merits. Finally, the policies impose only slight burdens on nonminorities. Award of a preference contravenes no legitimate, firmly rooted expectation of competing applicants, since the limited number of frequencies available means that no one has First Amendment right to a license, and the granting of licenses requires consideration of public interest factors. Nor does the distress sale policy impose an undue burden on nonminorities, since it may be invoked only with respect to a small fraction of broadcast licenses, only when the licensee chooses to sell out at a low price rather than risk a hearing, and only when no competing application has been filed. It is not a quota or fixed quantity set-aside, and nonminorities are free to compete for the vast remainder of other available license opportunities. Pp. 584-600.

COUNSEL: Gregory H. Guillot argued the cause for petitioner [**10] in No. 89-453. With him on the briefs was John H. Midlen, Jr. J. Roger Wollenberg argued the cause for petitioner in No. 89-700. On the briefs were Lee H. Simowitz and Linda R. Bocchi.

Daniel M. Armstrong argued the cause for the federal respondent in No. 89-453. With him on the brief were Robert L. Pettit and C Grey Pash, Jr. Margot Polivy argued the cause for respondent Rainbow Broadcasting Co. With her on the brief was Katrina Renouf. Harry F. Cole argued the cause for respondents in No. 89-700 and filed a brief for respondent Shurberg Broadcasting of Hartford, Inc. Robert L. Pettit, Daniel M. Armstrong, and C. Grey Pash, Jr., filed a brief for the Federal Communications Commission, as respondent under this Court's Rule 12.4, in support of petitioner. +

+ Briefs of amici curiae urging reversal in No. 89-453 were filed for the United States by Acting Solicitor General Roberts, Acting Assistant Attorney General Turner, Deputy Solicitor General Merrill, Deputy Assistant Attorney General Clegg, and Michael R. Lazerwitz; for Associated General Contractors of America, Inc., by Charles J. Cooper, Michael A. Carvin, and Michael E. Kennedy; for Galaxy Communications, Inc., by Ronald D. Maines; for the Mountain States Legal Foundation et al. by William Perry Pendley; for the Pacific Legal Foundation by Ronald A. Zumbrun, Anthony T. Caso, and Sharon L. Browne; and for

the Washington Legal Foundation by Glen D. Nager, Patricia A. Dunn, Daniel J. Popeo, Paul D. Kamenar, and John C. Scully. Vincent A. Pepper and Louis C. Stephens filed a brief for the Committee to Promote Diversity as amicus curiae urging reversal in No. 89-700.

Brief of amici curie urging affirmance in No. 89-453 and reversal in No. 89-700 were filed for the American Civil Liberties Union by Burt Neuborne, Steven R. Shapiro, John A. Powell, and Sarah E. Burns; for the Congressional Black Caucus by David E. Honig, Squire Padgett, and George W. Jones, Jr. ; for the National Association of Black Owned Broadcasters, Inc., by Walter E. Diercks, James L. Winston, and Lois E. Wright; and for the National Bar Association by J. Clay Smith, Jr.

Briefs of Amici curiae urging affirmance in No. 89-453 were filed for the United States Senate by Michael Davidson, Ken U. Benjamin, Jr., and Morgan J. Frankel; for the American Jewish Committee et al. by Angela J. Campbell, Andrew Jay Schwartzman, and Elliot Mincberg; for Capital Cities/ABC, Inc., by J. Roger Wollenberg, Carl Willner, and Stephen A. Weiswasser; for Cook Inlet Region, Inc., et al. by Vernon E. Jordan, Jr., and Daniel Joseph; for Giles

Television, Inc., by Douglas B. McFadden and Donald J. Evans; for the Lawyers' Committee for Civil Rights Under Law by John Payton, Mark S. Hersh, Robert F. Mullen, David S. Tatel, and Norman Redlich; for the NAACP Legal Defense & Educational Fund, Inc., by Julius L. Chambers, Charles Stephen Ralston, Ronald L. Ellis, Eric Schnapper, Clyde E. Murphy, and Nolan A. Bowie; and for the National League of Cities et al. by Benna Ruth Solomon and Richard A. Simpson.

Briefs of amici curiae urging affirmance in No. 89-700 were filed for the United States by Acting Solicitor General Roberts, Acting Assistant Attorney General Turner, Deputy Solicitor General Merrill, Deputy Assistant Attorney General Clegg, and Michael R. Lazerwitz; for the Pacific Legal Foundation by Ronald A. Zumbrun, Anthony T. Caso, and Sharon L. Browne; and for Southeastern Legal Foundation, Inc., by Robert L. Barr, Jr., and G. Stephen Parker.

Briefs of amici curiae in No. 89-453 were filed for American Women in Radio and Television, Inc., by Richard P. Holme; and for Jerome Thomas Lamprecht by Michael P. McDonald. [**11]

JUDGES: BRENNAN, J., delivered the opinion of the Court, in which WHITE, MARSHALL, BLACKMUN, and STEVENS, JJ., joined. STEVENS, J., filed a concurring opinion, post, p. 601. O'CONNOR, J., filed a dissenting opinion, in which REHNQUIST, C. J., and SCALIA and KENNEDY, JJ., joined, post, p. 602. KENNEDY, J., filed a dissenting opinion, in which SCALIA, J., joined, post, p. 631.

OPINIONBY: BRENNAN

OPINION: [*552] [***455] JUSTICE BRENNAN delivered the opinion of the Court.

The issue in these cases, consolidated for decision today, is whether certain

minority preference policies of the Federal Communications Commission violate the equal protection component of the Fifth Amendment. The policies in question are (1) a program awarding an enhancement for minority ownership in comparative proceedings for new licenses, and (2) the minority "distress sale" program, which permits a limited category of existing radio and television broadcast stations to be transferred only to minority -controlled firms. We hold that these policies do not violate equal protection principles.

I

A

The policies before us today can best be understood by reference to the history of federal efforts to promote minority [*553] participation [**12] in the broadcasting industry. n1 In the Communications Act of 1934, 48 Stat. 1064, as amended, Congress assigned to the Federal Communications Commission (FCC or Commission) exclusive authority to grant licenses, based on "public convenience, interest, [***456] or necessity," to persons wishing to construct and operate radio and television broadcast stations in the United States. See 47 U. S. C. @@ 151, 301, 303, 307, 309 (1982 ed.). Although for the past two decades minorities have constituted at least one-fifth of the United States population, during this time relatively few members of minority groups have held broadcast licenses. In 1971, minorities owned only 10 of the approximately 7,500 radio stations in the country and none of the more than

1,000 television stations, see TV 9, Inc. v. FCC, 161 U.S. App. D. C. 349, 357, n. 28, 495 F. 2d 929, 937, n. 28 (1973), cert. denied, 419 U.S. 986 (1974); see also 1 U.S. Commission on Civil Rights, Federal Civil Rights Enforcement Effort -- 1974, p. 49 (Nov. 1974); in 1978, minorities owned less than 1 percent of the Nation's [**13] radio and television stations, see FCC Minority Ownership Task Force, Report on Minority Ownership in Broadcasting 1 (1978) (hereinafter Task Force Report); and in 1986, they owned just 2.1 percent of the more than 11,000 radio and television stations in the United States. See National Association of Broadcasters, Minority Broadcasting Facts 6 (Sept. 1986). Moreover, these statistics fail to reflect the fact that, as late entrants who often have been able to obtain only the less valuable stations, many minority [*554] broadcasters serve geographically limited markets with relatively small audiences. n2

----------Footnotes----------

n1 The FCC has defined the term " minority" to include "those of Black, Hispanic Surnamed, American Eskimo, Aleut, American Indian and Asiatic American extraction." Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 F. C. C. 2d 979, 980, n. 8 (1978). See also Commission Policy Regarding Advancement of Minority Ownership in Broadcasting, 92 F. C. C. 2d 849, 849, n. 1 (1982), citing 47 U. S. C. @ 309(i)(3)(C) (1982 ed.). [**14]

n2 See Task Force Report 1; Wimmer, Deregulation and Market Failure in Minority Programming: The Socioeconomic Dimensions of Broadcast Reform, 8

Comm/Ent L. J. 329, 426, n. 516 (1986). See also n. 46, infra.

----------End Footnotes----------

The Commission has recognized that the viewing and listening public suffers when minorities are underrepresented among owners of television and radio stations:

"Acute underrepresentation of minorities among the owners of broadcast properties is troublesome because it is the licensee who is ultimately responsible for identifying and serving the needs and interests of his or her audience. Unless minorities are encouraged to enter the mainstream of the commercial broadcasting business, a substantial portion of our citizenry will remain underserved and the larger, non- minority audience will be deprived of the views of minorities. " Task Force Report 1.

The Commission has therefore worked to encourage minority participation in the broadcast industry. The FCC began by formulating rules to prohibit licensees from discriminating against minorities in employment. n3 The FCC explained that [**15] "broadcasting is an important mass media form which, because it makes use of the airwaves belonging to the public, must obtain a Federal license under a public interest standard and must operate in the public interest in order to obtain periodic renewals of that license." Nondiscrimination Employment Practices of Broadcast [***457] Licensees, 13 F. C. C. 2d 766, 769 (1968). Regulations dealing with employment practices were justified as necessary to enable the FCC to satisfy [*555] its obligation under the Communications Act of 1934 to promote diversity of programming. See NAACP v. FPC, 425 U.S. 662, 670, n. 7 (1976). The United States Department of Justice, for example,

contended that equal employment opportunity in the broadcast industry could "'contribute significantly toward reducing and ending discrimination in other industries'" because of the "'enormous impact which television and radio have upon American life.'" Nondiscrimination Employment Practices, supra, at 771 (citation omitted).

----------Footnotes----------

n3 See, e. g., Nondiscrimination Employment Practices of Broadcast Licensees, 18 F. C. C. 2d 240 (1969); Nondiscrimination Employment Practices of Broadcast Licensees, 23 F. C. C. 2d 430 (1970); Nondiscrimination in Employment Policies and Practices of Broadcast Licensees, 54 F. C. C. 2d 354 (1975); Nondiscrimination in Employment Policies and Practices of Broadcast Licensees, 60 F. C. C. 2d 226 (1976). The FCC's current equal employment opportunity policy is outlined at 47 CFR @ 73.2080 (1989).

----------End Footnotes----------
[**16]

Initially, the FCC did not consider minority status as a factor in

licensing decisions, maintaining as a matter of Commission policy that no preference to minority ownership was warranted where the record in a particular case did not give assurances that the owner's race likely would affect the content of the station's broadcast service to the public. See Mid-Florida Television Corp., 33 F. C. C. 2d 1, 17-18 (Rev. Bd.), review denied, 37 F. C. C. 2d 559 (1972), rev'd, TV 9, Inc. v. FCC, supra. The Court of Appeals for the District of Columbia Circuit, however, rejected the Commission's position that an "assurance of superior community service attributable to . . . Black ownership and participation" was required before a preference could be awarded. TV 9, Inc., supra, at 358, 495 F. 2d, at 938. "'Reasonable expectation,'" the court held, "'not advance demonstration, is a basis for merit to be accorded relevant factors.'" Ibid.. See also Garrett v. FCC, 168 U.S. App. D. C. 266, 273, 513 F. 2d 1056, 1063 (1975). [**17]

In April 1977, the FCC conducted a conference on minority ownership policies, at which participants testified that minority preferences were justified as a means of increasing diversity of broadcast viewpoint. See Task Force Report 4-6. Building on the results of the conference, the recommendations of the task force, the decisions of the Court of Appeals for the District of Columbia Circuit, and a petition proposing [*556] several minority ownership policies filed with the Commission in January 1978 by the Office of Telecommunications Policy (then part of the Executive Office of the President) and the Department of Commerce, n4 the FCC adopted in May 1978 its Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 F. C. C. 2d 979. After recounting its past efforts to expand broadcast diversity, the FCC concluded:

"[W]e are compelled to observe that the views of racial minorities continue to be inadequately represented in the broadcast media. This situation is detrimental not only to the minority audience but to all of the viewing and listening public. Adequate representation of minority viewpoints in programming serves not [**18] only the needs and interests of the minority community but also enriches and educates the non- minority audience. It

enhances the diversified programming which is a key objective [***458] not only of the Communications Act of 1934 but also of the First Amendment." Id., at 980-981 (footnotes omitted).

Describing its actions as only "first steps," id., at 984, the FCC outlined two elements of a minority ownership policy.

----------Footnotes----------

n4 See Telecommunications Minority Assistance Program, Public Papers of the Presidents, Jimmy Carter, Vol. 1, Jan. 31, 1978, pp. 252, 253 (1979). The petition observed that "[m]inority ownership markedly serves the public interest, for it ensures the sustained and increased sensitivity to minority audiences." Id., at 252. See also n. 45, infra.

----------End Footnotes----------

First, the Commission pledged to consider minority ownership as one factor in comparative proceedings for new licenses. When the Commission compares mutually exclusive applications for [**19] new radio or television broadcast stations, n5 it [*557] looks principally at six factors: diversification of control of mass media communications, full-time participation in station operation by owners (commonly referred to as the "integration" of ownership and management), proposed program service, past broadcast record, efficient use of the frequency, and the character of the applicants. See Policy Statement on Comparative Broadcast Hearings, 1 F. C. C. 2d 393, 394-399 (1965); West Michigan Broadcasting Co. v. FCC, 236 U.S. App. D. C. 335, 338-339, 735 F. 2d 601, 604-607 (1984), cert. denied, 470 U.S. 1027 (1985). In the Policy Statement on Minority Ownership, the FCC announced that minority ownership and participation in management would be considered in a comparative hearing as a "plus" to be weighed together with all other relevant factors. See WPIX, Inc., 68 F. C. C. 2d 381, 411-412 (1978). The "plus" is awarded only to the extent that a minority owner actively participates in the day-to-day management of the station.

----------Footnotes----------

n5 In Ashbacker Radio Corp. v. FCC, 326 U.S. 327 (1945), we held that when the Commission was faced with two "mutually exclusive" bona fide applications for license -- that is, two proposed stations that would be incompatible technologically -- it was obligated to set the applications for a comparative hearing. See id., at 333.

----------End Footnotes----------
[**20]

Second, the FCC outlined a plan to increase minority opportunities to receive reassigned and transferred licenses through the so-called "distress sale" policy. See 68 F. C. C. 2d, at 983. As a general rule, a licensee whose qualifications to hold a broadcast license come into question may not assign or transfer that license until the FCC has resolved its doubts in a noncomparative hearing. The distress sale policy is an exception to that practice, allowing a broadcaster whose license has been designated for a revocation hearing, or whose renewal application has been designated for hearing, to assign the license to

an FCC-approved minority enterprise. See ibid.; Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting, 92 F. C. C. 2d 849, 851 (1982). The assignee must meet the FCC's basic qualifications, and the minority ownership must exceed 50 percent or be controlling. n6 The buyer must purchase the license before [*558] the start of the revocation or renewal hearing, and the price must not exceed 75 percent of fair market value. These two Commission minority ownership policies are at issue [**21] today. n7

----------Footnotes----------

n6 In 1982, the FCC determined that a limited partnership could qualify as a minority enterprise if the general partner is a member of a minority group who holds at least a 20 percent interest and who will exercise "complete control over a station's affairs." 92 F. C. C. 2d, at 855.

n7 The FCC also announced in its 1978 statement a tax certificate policy and other minority preferences, see 68 F. C. C. 2d, at 983, and n. 19; 92 F. C. C. 2d, at 850-851, which are not at issue today. Similarly, the Commission's gender preference policy, see Gainesville Media, Inc., 70 F. C. C. 2d 143, 149 (Rev. Bd. 1978); Mid-Florida Television Corp., 69 F. C. C. 2d 607, 651-652 (Rev. Bd. 1978), set aside on other grounds, 87 F. C. C. 2d 203 (1981), is not before us today. See Winter Park Communications, Inc. v. FCC, 277 U.S. App. D. C. 134, 139-140, n. 5, 873 F. 2d 347, 352-353, n. 5 (1989); Metro Broadcasting, Inc., 3 F. C. C. Rcd 866, 867, n. 1 (1988). □

----------End Footnotes----------

[**22]

[***459] B

1

In No. 89-453, petitioner Metro Broadcasting, Inc. (Metro), challenges the Commission's policy awarding preferences to minority owners in comparative licensing proceedings. Several applicants, including Metro and Rainbow Broadcasting (Rainbow), were involved in a comparative proceeding to select among three mutually exclusive proposals to construct and operate a new UHF television station in the Orlando, Florida, metropolitan area. After an evidentiary hearing, an Administrative Law Judge (ALJ) granted Metro's application. Metro Broadcasting, Inc., 96 F. C. C. 2d 1073 (1983). The ALJ disqualified Rainbow from consideration because of "misrepresentations" in its application. Id., at 1087. On review of the ALJ's decision, however, the Commission's Review Board disagreed with the ALJ's finding regarding Rainbow's candor and concluded that Rainbow was qualified. Metro Broadcasting, Inc., 99 F. C. C. 2d 688 (1984). The Board proceeded to consider Rainbow's comparative showing and found it superior to Metro's. In so doing, the Review Board awarded Rainbow a substantial enhancement [**23] [*559] on the ground that it was 90 percent Hispanic owned, whereas Metro had only one minority partner who owned 19.8 percent of the enterprise. The Review Board found that Rainbow's minority credit outweighed Metro's local residence and civic participation advantage. Id., at 704. The Commission denied review of the Board's decision largely without discussion, stating merely that it "agree[d] with the Board's resolution of this case." No. 85-558 (Oct. 18, 1985), p. 2, App. to Pet. for Cert. in No. 89-453, p. 61a.

Metro sought review of the Commission's order in the United States Court of Appeals for the District of Columbia Circuit, but the appeal's disposition was delayed; at the Commission's request, the court granted a remand of the record for further consideration in light of a separate ongoing inquiry at the Commission regarding the validity of its minority and female ownership

policies, including the minority enhancement credit. See Notice of Inquiry on Racial, Ethnic or Gender Classifications, 1 F. C. C. Rcd 1315 (1986) (Docket 86-484). n8 The Commission determined [***460] that the outcome in the licensing [**24] proceeding between Rainbow and Metro might depend on whatever the Commission concluded [*560] in its general evaluation of minority ownership policies, and accordingly it held the licensing proceeding in abeyance pending further developments in the Docket 86-484 review. See Metro Broadcasting, Inc., 2 F. C. C. Rcd. 1474, 1475 (1987).

----------Footnotes----------

n8 That inquiry grew out of the Court of Appeals' decision in Steele v. FCC, 248 U.S. App. D. C. 279, 770 F. 2d 1192 (1985), in which a panel of the Court of Appeals held that the FCC lacks statutory authority to grant enhancement credits in comparative license proceedings to women owners. Although the panel expressly stated that "[u]nder our decisions, the Commission's authority to adopt minority preferences . . . is clear," id., at 283, 770 F. 2d, at 1196, the Commission believed that the court's opinion nevertheless raised questions concerning its minority ownership policies. After the en banc court vacated the panel opinion and set the case for rehearing, the FCC requested that the Court of Appeals remand the case without considering the merits to allow the FCC to reconsider the basis of its preference policy. The request was granted. The Commission, "despite its prior misgivings, has now indicated clearly that it supports the distress sale" and other minority ownership policies, Shurberg Broadcasting of Hartford, Inc. v. FCC, 278 U.S. App. D. C. 24, 81, 876 F. 2d 902, 959 (1989) (Wald, C. J., dissenting from denial of rehearing en banc), and has defended them before this Court.

----------End Footnotes----------
[**25]

Prior to the Commission's completion of its Docket 86-484 inquiry, however, Congress enacted and the President signed into law the FCC appropriations legislation for fiscal year 1988. The measure prohibited the Commission from spending any appropriated funds to examine or change its minority ownership policies. n9 Complying with this directive, the Commission closed its Docket 86-484 inquiry. See Reexamination of Racial, Ethnic or Gender Classifications, Order, 3 F. C. C. Rcd 766 (1988). The FCC also reaffirmed its grant of the license in this case to Rainbow Broadcasting. See Metro Broadcasting, Inc., 3 F. C. C. Rcd 866 (1988).

----------Footnotes----------

n9 The appropriations legislation provided:
"That none of the funds appropriated by this Act shall be used to repeal, to retroactively apply changes in, or to continue a reexamination of, the policies of the Federal Communications Commission with respect to comparative licensing, distress sales and tax certificates granted under 26 U. S. C. @ 1071, to expand minority and women ownership of broadcasting licenses, including those

established in Statement of Policy on Minority Ownership of Broadcast Facilities, 68 F. C. C. 2d 979 and 69 F. C. C. 2d 1591, as amended, 52 R. R. 2d [1301] (1982) and Mid-Florida Television Corp., [69] F. C. C. 2d 607 Rev. Bd. (1978) which were effective prior to September 12, 1986, other than to close MM Docket No. 86-484 with a reinstatement of prior policy and a lifting of suspension of any sales, licenses, applications, or proceedings, which were suspended pending the conclusion of the inquiry." Continuing Appropriations Act for Fiscal Year 1988, Pub. L. 100-202, 101 Stat. 1329-31.

----------End Footnotes----------

[**26]

The case returned to the Court of Appeals, and a divided panel affirmed the Commission's order awarding the license to Rainbow. The court concluded that its decision was controlled by prior Circuit precedent and noted that the Commission's action was supported by "'highly relevant congressional action that showed clear recognition of the extreme underrepresentation of minorities and their perspectives in [*561] the broadcast mass media.'" Winter Park Communications, Inc. v. FCC, 277 U.S. App. D. C. 134, 140, 873 F. 2d 347, 353 (1989), quoting West Michigan, 236 U.S. App. D. C., at 347, 735 F. 2d, at 613. After petitions for rehearing and suggestions for rehearing en banc were denied, we granted certiorari. 493 U.S. 1017 (1990).

2

The dispute in No. 89-700 emerged from a series of attempts by Faith Center, Inc., the licensee of a Hartford, Connecticut television station, to execute a minority distress sale. In December 1980, the FCC designated for a hearing Faith Center's application for renewal of its license. See Faith Center, Inc., FCC 80-680 (Dec. [**27] 21, 1980). In February 1981, Faith Center filed with the FCC a petition for special relief seeking permission to transfer its license under the distress sale policy. The Commission granted the request, see Faith Center, Inc., 88 F. C. C. 2d 788 (1981), but the proposed sale was not completed, apparently due to the purchaser's inability to obtain adequate [***461] financing. In September 1983, the Commission granted a second request by Faith Center to pursue a distress sale to another minority -controlled buyer. The FCC rejected objections to the distress sale raised by Alan Shurberg, who at that time was acting in his individual capacity. n10 See Faith Center, Inc., 54 Radio Reg. 2d (P&F) 1286, 1287-1288 (1983); Faith Center, Inc., 55 Radio Reg. 2d (P&F) 41, 44-46 (Mass Media Bur. 1984). This second distress sale also was not consummated, apparently because of similar financial difficulties on the buyer's part.

----------Footnotes----------

n10 Mr. Shurberg is the sole owner of Shurberg Broadcasting of Hartford, Inc., respondent in No. 89-700.

----------End Footnotes----------

[**28]

In December 1983, respondent Shurberg Broadcasting of Hartford, Inc. (Shurberg), applied to the Commission for a permit to build a television station in Hartford. The application was mutually exclusive with Faith Cener's

renewal [*562] application, then still pending. In June 1984, Faith Center again sought the FCC's approval for a distress sale, requesting permission to sell the station to Astroline Communications Company Limited Partnership (Astroline), a minority applicant. Shurberg opposed the sale to Astroline on a number of grounds, including that the FCC's distress sale program violated Shurberg's right to equal protection. Shurberg therefore urged the Commission to deny the distress sale request and to schedule a comparative hearing to examine the application Shurberg had tendered alongside Faith Center's renewal request. In December 1984, the FCC approved Faith Center's petition for permission to assign its broadcast license to Astroline pursuant to the distress sale policy. See Faith Center, Inc., 99 F. C. C. 2d 1164 (1984). The FCC rejected Shurberg's equal protection challenge to the policy as "without merit." Id., at 1171. [**29]

Shurberg appealed the Commission's order to the United States Court of Appeals for the District of Columbia Circuit, but disposition of the appeal was delayed pending completion of the Commission's Docket 86-484 inquiry into the minority ownership policies. See supra, at 559. After Congress enacted and the President signed into law the appropriations legislation prohibiting the FCC from continuing the Docket 86-484 proceeding, see supra, at 560, the Commission reaffirmed its order granting Faith Center's request to assign its Hartford license to Astroline pursuant to the minority distress sale policy. See Faith Center, Inc., 3 F. C. C. Rcd 868 (1988).

A divided Court of Appeals invalidated the Commission's minority distress sale policy. Shurberg Broadcasting of Hartford, Inc. v. FCC, 278 U.S. App. D. C. 24, 876 F. 2d 902 (1989). In a per curiam opinion, the panel majority held that the policy "unconstitutionally deprives Alan Shurberg and Shurberg Broadcasting of their equal protection rights under the Fifth Amendment because the program is not narrowly tailored to remedy past discrimination [**30] or to promote [*563] programming diversity" and that "the program unduly burdens Shurberg, an innocent nonminority, and is not reasonably related to the interests it seeks to vindicate." Id., at 24-25, 876 F. 2d, at 902-903. Petitions for rehearing and suggestions for rehearing en banc were [***462] denied, and we granted certiorari. 493 U.S. 1018 (1990).

II

It is of overriding significance in these cases that the FCC's minority ownership programs have been specifically approved -- indeed, mandated -- by Congress. In Fullilove v. Klutznick, 448 U.S. 448 (1980), Chief Justice Burger, writing for himself and two other Justices, observed that although "[a] program that employs racial or ethnic criteria . . . calls for close examination," when a program employing a benign racial classification is adopted by an administrative agency at the explicit direction of Congress, we are "bound to approach our task with appropriate deference to the Congress, a co-equal branch charged by the Constitution with the power to 'provide for the . . . general Welfare of the United States' [**31] and 'to enforce, by appropriate legislation,' the equal protection guarantees of the Fourteenth Amendment." Id.,

at 472; see also id., at 491; id., at 510, and 515-516, n. 14 (Powell, J., concurring); id., at 517-520 (MARSHALL, J., concurring in judgment). We explained that deference was appropriate in light of Congress' institutional competence as the National Legislature, see id., at 490 (opinion of Burger, C. J.); id., at 498 (Powell, J., concurring), as well as Congress' powers under

the Commerce Clause, see id., at 475-476 (opinion of Burger, C. J.); id., at 499 (Powell, J., concurring), the Spending Clause, see id., at 473-475, 478 (opinion of Burger, C. J.), and the Civil War Amendments, see id., at 476-478 (opinion of Burger, C. J.); id., at 500, 508-509 (Powell, J., concurring). n11

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n11 JUSTICE O'CONNOR's suggestion that the deference to Congress described in Fullilove rested entirely on Congress' powers under @ 5 of the Fourteenth Amendment, post, at 606-607, is simply incorrect. The Chief Justice expressly noted that in enacting the provision at issue, "Congress employed an amalgam of its specifically delegated powers." 448 U.S., at 473.

----------End Footnotes----------
[**32]

[*564] A majority of the Court in Fullilove did not apply strict scrutiny to the race-based classification at issue. Three Members inquired "whether the objectives of th[e] legislation are within the power of Congress" and "whether the limited use of racial and ethnic criteria . . . is a constitutionally permissible means for achieving the congressional objectives." Id., at 473 (opinion of Burger, C. J.) (emphasis in original). Three other Members would have upheld benign racial classifications that "serve important governmental objectives and are substantially related to achievement of those objectives." Id., at 519 (MARSHALL, J., concurring in judgment). We apply that standard today. We hold that benign raceconscious measures mandated by Congress n12 -- even if those [*565] measures are [***463] not "remedial" in the sense of being designed to compensate victims of past governmental or societal discrimination -- are constitutionally permissible to the extent that they serve important governmental objectives within the power of Congress and are substantially related to achievement of those objectives. [**33]

----------Footnotes----------

n12 We fail to understand how JUSTICE KENNEDY can pretend that examples of "benign" race-conscious measures include South African apartheid, the "separate-but-equal" law at issue in Plessy v. Ferguson, 163 U.S. 537 (1896), and the internment of American citizens of Japanese ancestry upheld in Korematsu v. United States, 323 U.S. 214 (1944). We are confident that an "examination of the legislative scheme and its history," Weinberger v. Wiesenfeld, 420 U.S. 636, 648, n. 16 (1975), will separate benign measures from other types of racial classifications. See, e. g., Mississippi Univ. for Women v. Hogan, 458 U.S. 718, 728-730 (1982). Of course, "the mere recitation of a benign, compensatory purpose is not an automatic shield which protects against any inquiry into the

actual purposes underlying a statutory scheme." Weinberger, supra, at 648; see also Brest, Foreword: In Defense of the Antidiscrimination Principle, 90 Harv. L. Rev. 1, 21-22 (1976); Strauss, The Myth of Colorblindness, 1986 Sup. Ct. Rev. 99, 128-129. The concept of benign race-conscious measures -- even those with at least some nonremedial purposes -- is as old as the Fourteenth Amendment. For example, the Freedman's Bureau Acts authorized the provision of land, education, medical care, and other assistance to Afro-Americans. See, e. g., Cong. Globe, 39th Cong., 1st Sess., 630 (1866) (statement of Rep. Hubbard) ("I think that the nation will be a great gainer by encouraging the policy of the Freedman's Bureau, in the cultivation of its wild lands, in the increased wealth which

industry brings and in the restoration of law and order in the insurgent States"). See generally Sandalow, Racial Preferences in Higher Education: Political Responsibility and the Judicial Role, 42 U. Chi. L. Rev. 653, 664-666 (1975); Schnapper, Affirmative Action and the Legislative History of the Fourteenth Amendment, 71 Va. L. Rev. 753, 754-783 (1985).

----------End Footnotes----------

[**34]

Our decision last Term in Richmond v. J. A. Croson Co., 488 U.S. 469 (1989), concerning a minority set-aside program adopted by a municipality, does not prescribe the level of scrutiny to be applied to a benign racial classification employed by Congress. As JUSTICE KENNEDY noted, the question of congressional action was not before the Court, id., at 518 (opinion concurring in part and concurring in judgment), and so Croson cannot be read to undermine our decision in Fullilove. In fact, much of the language and reasoning in Croson reaffirmed the lesson of Fullilove that raceconscious classifications adopted by Congress to address racial and ethnic discrimination are subject to a different standard than such classifications prescribed by state and local governments. For example, JUSTICE O'CONNOR, joined by two other Members of this Court, noted that "Congress may identify and redress the effects of society-wide discrimination," 488 U.S., at 490, and that Congress "need not make specific findings of discrimination to engage in race-conscious relief." Id., at 489. [**35] n13 Echoing Fullilove's emphasis on Congress [*566] as a National Legislature that stands above factional politics, JUSTICE SCALIA argued that as a matter of "social reality and governmental theory," the Federal Government is unlikely [***464] to be captured by minority racial or ethnic groups and used as an instrument of discrimination. 488 U.S., at 522 (opinion concurring in judgment). JUSTICE SCALIA explained that "[t]he struggle for racial justice has historically been a struggle by the national society against oppression in the individual States," because of the "heightened danger of oppression from political factions in small, rather than large, political units." Id., at 522, 523. n14

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n13 JUSTICE O'CONNOR, in a passage joined by THE CHIEF JUSTICE and JUSTICE WHITE, observed that the decision in Fullilove had been influenced by the fact that the set-aside program at issue was "'congressionally mandated.'" 488 U.S.,

actual purposes underlying a statutory scheme." Weinberger, supra, at 648; see also Brest, Foreword: In Defense of the Antidiscrimination Principle, 90 Harv. L. Rev. 1, 21-22 (1976); Strauss, The Myth of Colorblindness, 1986 Sup. Ct. Rev. 99, 128-129. The concept of benign race-conscious measures -- even those with at least some nonremedial purposes -- is as old as the Fourteenth Amendment. For example, the Freedman's Bureau Acts authorized the provision of land, education, medical care, and other assistance to Afro-Americans. See, e. g., Cong. Globe, 39th Cong., 1st Sess., 630 (1866) (statement of Rep. Hubbard) ("I think that the nation will be a great gainer by encouraging the policy of the Freedman's Bureau, in the cultivation of its wild lands, in the increased wealth which

industry brings and in the restoration of law and order in the insurgent States"). See generally Sandalow, Racial Preferences in Higher Education: Political Responsibility and the Judicial Role, 42 U. Chi. L. Rev. 653, 664-666 (1975); Schnapper, Affirmative Action and the Legislative History of the Fourteenth Amendment, 71 Va. L. Rev. 753, 754-783 (1985).

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at 491 (citation omitted; emphasis in original). JUSTICE O'CONNOR's opinion acknowledged that our decision in Fullilove regarding a congressionally approved preference "did not employ 'strict scrutiny.'" 488 U.S., at 487. [**36]

n14 See also id., at 495-496 (opinion of O'CONNOR, J.); Ely, The Constitutionality of Reverse Racial Discrimination, 41 U. Chi. L. Rev. 723, 728-735 (1974), cited with approval in Croson, 488 U.S. at 496.

----------End Footnotes----------

We hold that the FCC minority ownership policies pass muster under the test we announce today. First, we find that they serve the important governmental objective of broadcast diversity. Second, we conclude that they are substantially related to the achievement of that objective.

A

Congress found that "the effects of past inequities stemming from racial and ethnic discrimination have resulted in a severe underrepresentation of minorities in the media of mass communications." H. R. Conf. Rep. No. 97-765, p. 43 (1982). Congress and the Commission do not justify the minority ownership policies strictly as remedies for victims of this discrimination, however. Rather, Congress and the FCC have selected the minority ownership policies primarily to promote programming diversity, and they urge that such diversity [**37] is an important governmental objective that can serve as a constitutional basis for the preference policies. We agree.

We have long recognized that "[b]ecause of the scarcity of [electromagnetic] frequencies, the Government is permitted to put restraints on licensees in favor of others whose views [*567] should be expressed on this unique medium." Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 390 (1969). The Government's role in distributing the limited number of broadcast licenses is not merely that of a "traffic officer," National Broadcasting Co. v. United States, 319 U.S. 190, 215 (1943); rather, it is axiomatic that broadcasting may be regulated in light of the rights of the viewing and listening audience and that "the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public." Associated Press v. United States, 326 U.S. 1, 20 (1945). Safeguarding the public's right to receive a diversity of views and information over the airwaves is therefore an integral component of the FCC's mission. We have observed [**38] that "'the "public interest" standard necessarily invites reference to First Amendment principles,'" FCC v. National Citizens Committee for Broadcasting, 436 U.S. 775, 795 (1978), quoting Columbia Broadcasting System, Inc. v. Democratic National Committee, 412 U.S. 94, 122 (1973), and that the Communications Act of 1934 has designated broadcasters as "fiduciaries for the public." FCC v. League of Women Voters of Cal., 468 U.S. 364, 377 (1984). [***465] "[T]he people as a whole retain their interest in free speech by radio [and other forms of broadcast] and their collective right to have the medium function consistently with the ends and purposes of the First Amendment," and "[i]t is the right of the viewers and listeners, not the right of the broadcasters, which is paramount." Red Lion, supra, at 390. "Congress may

. . . seek to assure that the public receives through this medium a balanced presentation of information on issues of public importance that otherwise might not be addressed if control of the medium were left entirely in the hands of those [**39] who own and operate broadcasting stations." League of Women Voters, supra, at 377.

Against this background, we conclude that the interest in enhancing broadcast diversity is, at the very least, an important governmental objective and is therefore a sufficient [*568] basis for the Commission's minority ownership policies. Just as a "diverse student body" contributing to a "'robust exchange of ideas'" is a "constitutionally permissible goal" on which a race-conscious university admissions program may be predicated, Regents of University of California v. Bakke, 438 U.S. 265, 311-313 (1978) (opinion of Powell, J.), the diversity of views and information on the airwaves serves important First Amendment values. Cf. Wygant v. Jackson Board of Education, 476 U.S. 267, 314-315 (1986) (STEVENS, J., dissenting). n15 The benefits of such diversity are not limited to the members of minority groups who gain access to the broadcasting industry by virtue of the ownership policies; rather, the benefits redound to all members of the viewing and listening audience. As

Congress found, "the American [**40] public will benefit by having access to a wider diversity of information sources." H. R. Conf. Rep. No. 97-765, supra, at 45; see also Minority Ownership of Broadcast Stations: Hearing before the Subcommittee on Communications of the Senate Committee on Commerce, Science, and Transportation, 101st Cong., 1st Sess., 66 (1989) (testimony of Roderick Porter, Deputy Chief, Mass Media Bureau of the FCC) ("[T]he FCC's minority policies are based on our conclusion that the entire broadcast audience, regardless of its racial composition, will benefit").

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n15 In Wygant v. Jackson Board of Education, JUSTICE O'CONNOR noted that, "although its precise contours are uncertain, a state interest in the promotion of racial diversity has been found sufficiently 'compelling,' at least in the context of higher education, to support the use of racial considerations in furthering that interest." 476 U.S., at 286 (opinion concurring in part and concurring in judgment). She further stated that "nothing the Court has said today necessarily forecloses the possibility that the Court will find other governmental interests which have been relied upon in the lower courts but which have not been passed on here to be sufficiently 'important' or 'compelling' to sustain the use of affirmative action policies." Ibid. Compare post, at 612 (O'CONNOR, J., dissenting).

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[*569] B

We also find that the minority ownership policies are substantially related to the achievement of the Government's interest. One component of this inquiry

concerns the relationship between expanded [***466] minority ownership and greater broadcast diversity; both the FCC and Congress have determined that such a relationship exists. Although we do not "'defer' to the judgment of the Congress and the Commission on a constitutional question," and would not "hesitate to invoke the Constitution should we determine that the Commission has not fulfilled its task with appropriate sensitivity" to equal protection principles, Columbia Broadcasting System, Inc. v. Democratic National Committee, 412 U.S., at 103, we must pay close attention to the expertise of the Commission and the factfinding of Congress when analyzing the nexus between minority ownership and programming diversity. With respect to this "complex" empirical question, ibid., we are required to give "great weight to the decisions of Congress and the experience of the Commission." Id., at 102.

1

The FCC has determined that increased minority [**42] participation in broadcasting promotes programming diversity. As the Commission observed in its 1978 Statement of Policy on Minority Ownership of Broadcasting Facilities, "ownership of broadcast facilities by minorities is [a] significant way of fostering the inclusion of minority views in the area of programming," and "[f]ull minority participation in the ownership and management of broadcast facilities results in a more diverse selection of programming." 68 F. C. C. 2d, at 981. Four years later, the FCC explained that it had taken "steps to enhance the ownership and participation of minorities in the media" in order to

"increas[e] the diversity in the control of the media and thus diversity in the selection of available programming, benefitting the public and serving the principle of the First Amendment." Minority Ownership in Broadcasting, [*570] 92 F. C. C. 2d, at 849-850. See also Radio Jonesboro, Inc., 100 F. C. C. 2d 941, 945, n. 9 (1985) ("'[T]here is a critical underrepresentation of minorities in broadcast ownership, and full minority participation in the ownership and management [**43] of broadcast facilities is essential to realize the fundamental goals of programming diversity and diversification of ownership'") (citation omitted). The FCC's conclusion that there is an empirical nexus between minority ownership and broadcasting diversity is a product of its expertise, and we accord its judgment deference.

Furthermore, the FCC's reasoning with respect to the minority ownership policies is consistent with longstanding practice under the Communications Act. From its inception, public regulation of broadcasting has been premised on the assumption that diversification of ownership will broaden the range of programming available to the broadcast audience. n16 [***467] Thus, "it is upon ownership that public policy places [*571] primary reliance with respect to diversification of content, and that historically has proved to be significantly influential with respect to editorial comment and the presentation of news." TV 9, Inc., 161 U.S. App. D. C., at 358, 495 F. 2d, at 938 (emphasis added). The Commission has never relied on the market alone to ensure that the needs of the audience are met. Indeed, one of the [**44] FCC's elementary regulatory assumptions is that broadcast content is not purely market-driven; if it were, there would be little need for consideration in licensing decisions of

such factors as integration of ownership and management, local residence, and civic participation. In this vein, the FCC has compared minority preferences to local residence and other integration credits:

"[B]oth local residence and minority ownership are fundamental considerations in our licensing scheme. Both policies complement our concern with diversification of control of broadcast ownership. Moreover, similar assumptions underlie both policies. We award enhancement credit for local residence because . . . [i]t is expected that [an] increased knowledge of the community of license will be reflected in a station's programming. Likewise, credit for minority ownership and participation is awarded in a comparative proceeding [because] ' minority ownership is likely to increase diversity of content, especially of opinion and viewpoint.'" Radio Jonesboro, Inc., supra, at 945 (footnotes omitted).

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n16 For example, in 1953, the Commission promulgated the first of its multiple ownership rules, the "fundamental purpose" of which is "to promote diversification of ownership in order to maximize diversification of program and service viewpoints." Amendment of Sections 3.35, 3.240, and 3.636 of Rules and Regulations Relating to Multiple Ownership of AM, FM, and Television Broadcast Stations, Report and Order, 18 F. C. C. 288, 291. Initially, the multiple ownership rules limited only the common control of broadcast stations. The Commission's current rules include limitations on broadcast/newspaper cross-ownership, cable/television cross-ownership, broadcast service cross-ownership, and common control of broadcast stations. See 47 CFR @@

73.3555, 76.501 (1989). The Commission has always focused on ownership, on the theory that "ownership carries with it the power to select, to edit, and to choose the methods, manner and emphasis of presentation, all of which are a critical aspect of the Commission's concern with the public interest." Amendment of Sections 73.34, 73.240, and 73.636 of Commission's Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations, Second Report and Order, 50 F. C. C. 2d 1046, 1050 (1975); see also Amendment of Sections 73.35, 73.240, and 73.636 of Commission Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations, First Report and Order, 22 F. C. C. 2d 306, 307 (1970) (multiple ownership rules "promot[e] diversification of programming sources and viewpoints"); Amendment of Sections 73.35, 73.240, and 73.636 of Commission's Rules Relating to Multiple Ownership of Standard, FM and Television Broadcast Stations, Report and Order, 45 F. C. C. 1476, 1477, 1482 (1964) ("[T]he greater the diversity of ownership in a particular area, the less chance there is that a single person or group can have 'an inordinate effect in a . . . programming sense, on public opinion at the regional level'"); Editorializing by Broadcast Licensees, 13 F. C. C. 1246, 1252 (1949) (ownership enables licensee "to insure that his personal viewpoint on any particular issue is presented in his station's broadcasts").

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Congress also has made clear its view that the minority ownership policies advance the goal of diverse programming. In recent years, Congress has specifically required the Commission, through appropriations legislation, to maintain the minority ownership policies without alteration. See n. 9, supra. We would be remiss, however, if we ignored the long history of congressional support for those policies prior to the passage of the appropriations Acts because, for the past two decades, Congress has consistently recognized the barriers encountered by minorities in entering the broadcast industry and has expressed emphatic support for the Commission's attempts to promote programming [***468] diversity by increasing minority ownership. Limiting our analysis to the immediate legislative history of the appropriations Acts in question "would erect an artificial barrier to [a] full understanding of the legislative process." Fullilove v. Klutznick, 448 U.S., at 502 (Powell, J., concurring). The "special attribute [of Congress] as a legislative body lies in its broader mission to investigate and consider all facts and opinions that may [**46] be relevant to the resolution of an issue. One appropriate source is the information and expertise that Congress acquires in the consideration and enactment of earlier legislation. After Congress has legislated repeatedly in an area of national concern, its Members gain experience that may reduce the need for fresh hearings or prolonged debate when Congress again considers action in that area." Id., at 502-503; see also id., at 478 (opinion of Burger, C. J.) ("Congress, of course, may legislate without compiling the kind of 'record' appropriate with respect to judicial or administrative proceedings").

Congress' experience began in 1969, when it considered a bill that would have eliminated the comparative hearing in license renewal proceedings, in order to avoid "the filing of a [*573] multiplicity of competing applications, often from groups unknown" and to restore order and predictability to the renewal process to "give the current license holder the benefit of the doubt warranted

by his previous investment and experience." 115 Cong. Rec. 14813 (1969) (letter of Sen. Scott). Congress heard testimony that, because [**47] the most valuable broadcast licenses were assigned many years ago, comparative hearings at the renewal stage afford an important opportunity for excluded groups, particularly minorities, to gain entry into the industry. n17 Opponents warned that the bill would "exclude minority groups from station ownership in important markets" by "fr[eezing]" the distribution of existing licenses. n18 Congress rejected the bill.

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n17 See Amend the Communications Act of 1934: Hearings on S. 2004 before the Subcommittee on Communications of the Senate Committee on Commerce, 91st Cong., 1st Sess., pt. 1, p. 128 (1969) (testimony of Earle Moore, National Citizens Committee for Broadcasting); id., pt. 2, at 520-521 (testimony of John

Pamberton, American Civil Liberties Union); id., at 566-567 (testimony of David Batzka, United Christian Missionary Society); id., at 626-627 (testimony of William Hudgins, Freedom National Bank).

n18 Id., at 642 (testimony of John McLaughlin, then associate editor of America magazine).

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Congress confronted the issue again in 1973 and 1974, when congressional committees held extensive hearings on proposals to extend the broadcast license period from three to five years and to modify the comparative hearing process for license renewals. Witnesses reiterated that renewals provided a valuable opportunity for minorities to obtain a foothold in the industry. n19 The proposals were never enacted, and the renewal process was left intact.

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n19 See Broadcast License Renewal: Hearings on H. R. 5546 et al. before the Subcommittee on Communications and Power of the House Committee on Interstate and Foreign Commerce, 93d Cong., 1st Sess., pt. 1, pp. 495-497 (1973) (testimony of William E. Hanks, Pittsburgh Community Coalition for Media Change); id., at 552-559 (testimony of Rev. George Brewer, Greater Dallas-Fort Worth Coalition for the Free Flow of Information); id., at 572-594 (testimony of James McCuller, Action for a Better Community, Inc.); id., pt. 2, at 686-689 (testimony of Morton Hamburg, adjunct assistant professor of communications law, New York University); Broadcast License Renewal Act: Hearings on S. 16 et al. before the Subcommittee on Communications of the Senate Committee on Commerce, 93d Cong., 2d Sess., pt. 1, pp. 325-329 (1974) (testimony of Ronald H. Brown, National Urban League); id., at 376-381 (testimony of Gladys T. Lindsay, Citizens Committee on Media); id., at 408-411 (testimony of Joseph L. Rauh, Jr., Leadership Conference on Civil Rights and Americans for Democratic Action); id., pt. 2, at 785-800 (testimony of Manuel Fierro, Raza Association of Spanish Surnamed Americans).

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[*574] [***469] During 1978, both the FCC and the Office of Telecommunications Policy presented their views to Congress as it considered a bill to deregulate the broadcast industry. The proposed Communications Act of 1978 would have, among other things, replaced comparative hearings with a lottery and created a fund for minorities who sought to purchase stations. As described by Representative Markey, the measure was intended to increase "the opportunities for blacks and women and other minorities in this country to get into the communications systems in this country so that their point of view and their interests can be represented." The Communications Act of 1978: Hearings on H. R. 13015 before the Subcommittee on Communications of the House Committee on Interstate and Foreign Commerce, 95th Cong., 2d Sess., vol. 5, pt. 1, p. 59

(1978). The bill's sponsor, Representative Van Deerlin, stated: "It was the hope, and with some reason the expectation of the framers of the bill, that the most effective way to reach the inadequacies of the broadcast industry in employment and programming would be by doing something at the top, that is, increasing minority ownership and management [**50] and control in broadcast stations." Id., vol. 3, at 698.

The Executive Branch objected to the lottery proposal on the ground that it would harm minorities by eliminating the credit granted under the comparative hearing scheme as developed by the FCC. See id., at 50. Although it acknowledged that a lottery could be structured to alleviate that concern by attributing a weight to minority ownership, see id., at 85, the Executive Branch explained that it preferred to [*575] grant credit for minority ownership during comparative hearings as a more finely tuned way of achieving the Communication Act's goal of broadcast diversity. See ibid. (contending that a lottery would not take into account the individual needs of particular communities).

Although no lottery legislation was enacted that year, Congress continued to explore the idea, n20 and when in 1981 it ultimately authorized a lottery procedure, Congress [***470] established a concomitant system of minority preferences. See Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35, 95 Stat. 357, 736-737. The Act provided that where more than one application for an initial license or construction permit was [**51] received, the Commission could grant the license or permit to a qualified applicant "through the use of a system of random selection," 47 U. S. C. @ 309(i)(1) (1982 ed.), so long as the FCC adopted rules to ensure "significant preferences" in the lottery process to groups underrepresented in the ownership of telecommunications facilities. @ 309(i)(3)(A). The accompanying Conference Report announced Congress's "firm intention" to award a lottery preference to minorities and other historically underrepresented groups, so that "the objective of increasing the number of media outlets owned by such persons or groups [would] be met." H. R. Conf. Rep. No. 97-208, p. 897 (1981). After the FCC complained of the difficulty of defining "underrepresented" groups and raised other problems concerning the statute, n21 Congress enacted a second lottery statute reaffirming its intention in unmistakable terms. Section 115 of the Communications Amendments [*576] Act of 1982, Pub. L. 97-259, 96 Stat. 1094 (amending 47 U.S.C. @ 309(i) (1982 ed.)), directs that in any random selection lottery conducted by the FCC, a preference [**52] is to be granted to every applicant whose receipt of a license would increase the diversification of mass media ownership and that, "[t]o further diversify the ownership of the media of mass communications, an additional significant preference [is to be given] to any applicant controlled by a member or members of a minority group." @ 309(i)(3)(A). Observing that

the nexus between ownership and programming "has been repeatedly recognized by both the Commission and the courts," Congress explained that it sought "to promote the diversification of media ownership and consequent diversification of programming content," a principle that "is grounded in the First Amendment." H. R. Conf. Rep. No. 97-765, p. 40 (1982). With this new mandate from Congress, the Commission adopted rules to govern the use of a lottery system to award

licenses for low power television stations. n22

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n20 For example, the proposed Communications Act of 1979 would have provided that any minority applicant for a previously unassigned license would be counted twice in the lottery pool. See Staff of the Subcommittee on Communications of the House Committee on Interstate and Foreign Commerce, H. R. 3333, "The Communications Act of 1979" Section-by-Section Analysis, 96th Cong., 1st Sess., 39-41 (Comm. Print 1979). [**53]

n21 See Amendment of Part 1 of Commission's Rules to Allow Selection from Among Mutually Exclusive Competing Applications Using Random Selection or Lotteries Instead of Comparative Hearings, 89 F. C. C. 2d 257, 277-284 (1982).

n22 See Amendment of the Commission's Rules to Allow the Selection from Among Certain Competing Applications Using Random Selection or Lotteries Instead of Comparative Hearings, 93 F. C. C. 2d 952 (1983).

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The minority ownership issue returned to the Congress in October 1986, n23 when a House subcommittee [***471] held a hearing to examine the Commission's inquiry into the validity of its minority ownership policies. The subcommittee chair expressed his view that "[t]he most important message of this [*577] hearing today, is that the Commission must not dismantle these longstanding diversity policies, which Congress has repeatedly endorsed, until such time as Congress or the courts direct otherwise." Minority -Owned Broadcast Stations: Hearing on H. R. 5373 before the Subcommittee on Telecommunications, [**54] Consumer Protection, and Finance of the House Committee on Energy and Commerce, 99th Cong., 2d Sess., 13 (1986) (Rep. Wirth). After the Commission issued an order holding in abeyance, pending completion of the inquiry, actions on licenses and distress sales in which a minority preference would be dispositive, n24 a number of bills proposing codification of the minority ownership policies were introduced in Congress. n25 Members of Congress questioned representatives of the FCC during hearings over a span of six months in 1987 with respect to the FCC appropriation for fiscal year 1988, n26 legislation to reauthorize the Commission for fiscal years 1988 and 1989, n27 and legislation to codify the Commission's minority ownership policies. n28

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n23 The issue had surfaced briefly in the 98th Congress, where proposals to codify and expand the FCC's minority ownership policies were the subject of extensive hearings in the House. See Minority Participation in the Media: Hearings before the Subcommittee on Telecommunications, Consumer Protection, and Finance of the House Committee on Energy and Commerce, 98th Cong., 1st

Sess. (1983); Parity for Minorities in the Media: Hearing on H. R. 1155 before